

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

FAIRFIELD SENTRY LIMITED, *et al.*,

Debtors in Foreign Proceedings.

FAIRFIELD SENTRY LIMITED (IN LIQUIDATION),
et al.,

Plaintiffs,

-against-

THEODOOR GGC AMSTERDAM, *et al.*,

Defendants.

This filing applies to the Adversary Proceedings listed in Appendix A.

**SUPPLEMENTAL MEMORANDUM OF LUXEMBOURG DEFENDANTS
IN SUPPORT OF DEFENDANTS' RENEWED MOTION TO DISMISS**

Under paragraph 2(c) of the March 20, 2020 Scheduling Order [Dkt. No. 2926], the Defendants listed in Appendix A, or the “Luxembourg Defendants,” respectfully submit this Supplemental Memorandum in Support of the Luxembourg Defendants’ March 16, 2020 renewed motion to dismiss.

The Luxembourg Defendants join in, adopt, and incorporate by reference the *Consolidated Memorandum of Law in Support of Defendants’ Renewed Motion to Dismiss Pursuant to 11 U.S.C. §§ 561(d) and 546(e) and Insufficient Service of Process on Defendants in Foreign Hague Service Convention Signatory States* (the “Consolidated Memorandum”), filed

on March 16, 2020 [Dkt. No. 2903].¹ As set forth in Part I of the Consolidated Memorandum, Section 546(e) of the Bankruptcy Code, as incorporated into these Chapter 15 proceedings by Section 561(d) of the Code, entirely bar the Liquidators' claims.

The Luxembourg Defendants submit this Supplemental Memorandum for the limited purpose of identifying and explaining the publicly available documents, of which the Court may take judicial notice, evidencing that they are “financial institutions” within the meaning of 11 U.S.C. § 101(22) or stockbrokers under 11 U.S.C. § 101(53A), and therefore that Section 546(e) applies to the Luxembourg Defendants as set forth in Section I.D of the Consolidated Memorandum.

Together with the Consolidated Brief, certain of the Luxembourg Defendants have submitted the Notice of Filing of Exhibits to Supplemental Memorandum of Luxembourg Defendants in Support of Defendants' Renewed Motion to Dismiss (the “Notice”). The documents attached to that Notice—submitted by all the Luxembourg Defendants—confirm that each of those defendants is a covered entity pursuant to Section 546(e). In particular, each Luxembourg Defendant is a “commercial or savings bank” or “trust company” and thus a “financial institution” under 11 U.S.C. § 101(22) or a “stockbroker” under 11 U.S.C. § 101(53A).

First, Exhibit A to the Notice consists of publicly available extracts from the Luxembourg Financial Sector Oversight Commission Firms Register, the Commission de Surveillance du Secteur Financier (CSSF). The CSSF is a public institution that supervises the professionals and products of the Luxembourg financial sector.² The CSSF website can be

¹ Capitalized terms not defined have the same meanings as in the Consolidated Memorandum.

² See <https://www.cssf.lu/en/about-the-cssf/about-the-cssf/>; see also *Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Madoff)*, 594 B.R. 167, 178 (Bankr. S.D.N.Y. 2018) (acknowledging that CSSF is “Luxembourg's financial regulator”); https://www.cssf.lu/fileadmin/files/Lois_reglements/Legislation/Lois/L_231298_cssf_upd300518_eng.pdf

accessed at <https://www.cssf.lu/en/documentation/search-entities/>. The CSSF extracts confirm, for each Luxembourg Defendant, that it was licensed as and conducting the business of banks (as indicated in the “Type” section of the excerpts) at all times between January 1, 2004 and December 31, 2008 (the “Relevant Period”).

Second, Exhibit B to the Notice consists of publicly available extracts from the Luxembourg Register of Trade and Companies (Registre de Commerce et des Sociétés Luxembourg) (RCS) as well as certified translations of each extract. The RCS is an “official directory of all the natural and legal persons in business and other bodies” operated by the Luxembourg Minister for Justice.³ The RCS website can be accessed at <https://www.lbr.lu/mjracs/jsp/IndexActionNotSecured.action?time=1584651349810&loop=2>. The RCS extracts likewise confirm for each Luxembourg Defendant, that it was licensed as and conducting the business of banks (as indicated in the “Company Purpose” or “Object social” section of the excerpts) at all times during the Relevant Period.⁴

f at 8 (“The CSSF is the competent authority responsible for the prudential supervision of credit institutions. . .”).

³ See “Business registers in Member States - Luxembourg,” EUROPEAN E-JUSTICE PORTAL, available at https://e-justice.europa.eu/content_business_registers_in_member_states-106-lu-maximizeMS-en.do?member=1 (last accessed March 13, 2020) (“The business register (Registre de Commerce et des Sociétés (RCS)) is an official directory of all the natural and legal persons in business and other bodies referred to by the amended Act of 19 December 2002. The business register operates under the authority of the Minister for Justice. The task of managing the business register is entrusted by the Minister for Justice to an economic interest grouping, the Luxembourg Business Registers (formerly GIE RCSL), comprising the State, the Chamber of Commerce (*Chambre de Commerce*) and the Chamber of Trades (*Chambre des Métiers*).”).

⁴ With respect to BNP Securities Services Luxembourg S.A., the RCS extract states that this entity operates “primarily in the areas of investment funds (acting as a deposit bank, transfer agent, central fund administrator under Luxembourg law), in providing services to issuers of debt securities (acting as a principal payer agent, brokerage agent on the Luxembourg stock market), in providing wealth management services and other specialized services adapted to the needs of a local and international institutional clientele.” BNP Securities Services Luxembourg S.A., therefore, also qualifies as a “stockbroker” as it is an entity that “engages in the business of effecting transactions in securities” either “for the account of others or with members of the general public, from or for such person’s own account”

Third, Exhibit C to the Notice consists of publicly available extracts from the French Financial Agents Register, the Registre des agents financiers (REGAFI). REGAFI lists all French companies that have been granted authorization to carry on banking, investment or payment services in France by the Autorité de contrôle prudentiel et de résolution (ACPR).⁵ ACPR is a French Independent Administrative Authority responsible, under Article 612-1 of France’s Monetary and Financial Code, for issuing licenses and authorizations in the financial sector.⁶ The REGAFI register is available at <https://www.regafi.fr/spip.php?rubrique3>. The REGAFI extracts confirm, for each Luxembourg Defendant, that it was licensed as and conducting the business of banks (as indicated in the “Activities based in France” section of the excerpts) at all times during the Relevant Period.

As explained on pages 24–29 in the Consolidated Memorandum, the Court can take judicial notice of the facts above showing that the Luxembourg Defendants are covered entities under Section 546(e), because those facts “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned,” including the multiple official and public sources summarized above. FED. R. EVID. 201(b)(2); *see* Consolidated Memorandum § I.D (citing *In re Tribune Co. Fraudulent Conveyance Litig. Note Holders*, 946 F.3d 66, 78 (2d Cir. 2019) and other decisions relying on financial regulatory documents to confirm financial institution status). Thus, even if the Court does not dismiss the Liquidators’ claims on the other grounds set forth in the Consolidated Memorandum, it should dismiss them because the

and where it has a “customer” within the meaning of Section 741 of the Bankruptcy Code. 11 U.S.C. §101(53A).

⁵ *See* <https://www.regafi.fr/spip.php?article8>.

⁶ *See* <https://acpr.banque-france.fr/en/acpr/about-acpr/tasks>.

Liquidators have no plausible basis to challenge the Luxembourg Defendants' status as financial institutions or stockbrokers under the Bankruptcy Code.⁷

RESERVATION OF RIGHTS

The Luxembourg Defendants expressly reserve all arguments not raised in the Consolidated Memorandum and this Supplemental Memorandum, including without limitation that the Bankruptcy Court lacks personal jurisdiction over the Luxembourg Defendants.

Dated: New York, New York
March 23, 2020

Respectfully submitted,

O'MELVENY & MYERS LLP

/s/ William J. Sushon

William J. Sushon

Daniel S. Shamah

Seven Times Square

New York, New York 10036

T: 212-326-2000

F: 212-326-2061

wsushon@omm.com

dshamah@omm.com

Attorneys for Credit Suisse (Luxembourg) SA

Additional Counsel listed on Appendix B

⁷ If the motion to dismiss is not granted now, the Luxembourg Bank Defendants reserve their rights to submit additional evidence to support their "financial institution" status and to submit evidence showing that they are "financial participants" or fall within other protected categories later in these proceedings.

APPENDIX A⁸

This supplemental memorandum applies to the following adversary proceedings:

	Adv. Pro. No.	Case Name	Defendant Name
1.	Adv. Pro. 10-03505	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. Edmond de Rothschild (Europe), et al.</i>	Edmond de Rothschild (Europe) f/k/a Banque Privée Edmond de Rothschild (Europe)
2.	Adv. Pro. 10-03616	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. Banque de Luxembourg, et al.</i>	Banque de Luxembourg
3.	Adv. Pro. 10-03624	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. Caceis Bank Luxembourg, et al.</i>	Caceis Bank Luxembourg
4.	Adv. Pro. 10-03626	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. BNP Paribas Luxembourg (a/k/a BGL BNP Paribas S.A.), et al.</i>	BNP Paribas Luxembourg (a/k/a BGL BNP Paribas S.A.)
5.	Adv. Pro. 10-03627	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. BNP Securities Services Luxembourg S.A., et al.</i>	BNP Securities Services Luxembourg S.A.
6.	Adv. Pro. 10-03634	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. Zurich Capital Markets Company, et al.</i>	Banco Itaú Europa Luxembourg SA
7.	Adv. Pro. 10-03635	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. ABN AMRO Schweiz AG, et al.</i>	Caceis Bank Luxembourg

⁸ The names of defendants included in this Appendix reflect parties named as defendants by the Liquidators in the relevant Complaints (or to the extent there has been an update to the docket in a particular Action changing the name of a defendant, the updated defendant name) (the “As-Named Defendants”). The inclusion of the As-Named Defendants in this Appendix or any other Appendix is not and shall not be construed as an acknowledgement that any such As-Named Defendants are cognizable legal entities or as a waiver of any substantive or procedural rights and remedies by any such As-Named Defendants, all of which are hereby expressly reserved.

	Adv. Pro. No.	Case Name	Defendant Name
8.	Adv. Pro. 10-03635	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. ABN AMRO Schweiz AG, et al.</i>	Banque Internationale à Luxembourg SA f/k/a Dexia Banque Internationale à Luxembourg SA
9.	Adv. Pro. 10-03635	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. ABN AMRO Schweiz AG, et al.</i>	RBC Investor Services Bank S.A. (f/k/a RBC Dexia Investor Services Bank S.A.)
10.	Adv. Pro. 10-03635	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. ABN AMRO Schweiz AG, et al.</i>	Société Générale Luxembourg f/k/a Société Générale Bank and Trust
11.	Adv. Pro. 10-03636	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. ABN AMRO Schweiz AG, et al.</i>	Caceis Bank Luxembourg
12.	Adv. Pro. 10-03636	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. ABN AMRO Schweiz AG, et al.</i>	Banque Internationale à Luxembourg SA f/k/a Dexia Banque Internationale à Luxembourg SA
13.	Adv. Pro. 10-03636	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. ABN AMRO Schweiz AG, et al.</i>	RBC Investor Services Bank S.A. (f/k/a RBC Dexia Investor Services Bank S.A.)
14.	Adv. Pro. 10-03636	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. ABN AMRO Schweiz AG, et al.</i>	Société Générale Luxembourg f/k/a Société Générale Bank and Trust
15.	Adv. Pro. 10-03755	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. Banco Itaú Europa Luxembourg SA, et al.</i>	Banco Itaú Europa Luxembourg SA
16.	Adv. Pro. 10-03864	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. Natixis Private Banking International SA - Client Account, et al.</i>	Natixis Wealth Management Luxembourg f/k/a Natixis Private Banking International S.A.
17.	Adv. Pro. 10-04088	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. Credit Suisse (Luxembourg) SA, et al.</i>	Credit Suisse (Luxembourg) SA

	Adv. Pro. No.	Case Name	Defendant Name
18.	Adv. Pro. 10-04090	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. Dexia BIL for Customer Account, et al.</i>	Banque Internationale à Luxembourg SA f/k/a Dexia Banque Internationale à Luxembourg SA
19.	Adv. Pro. 11-01242	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. BGL BNP Paribas S.A., et al..</i>	BGL BNP Paribas S.A. (f/k/a/ Fortis Banque Luxembourg)
20.	Adv. Pro. 11-01242	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. BGL BNP Paribas S.A., et al..</i>	Banque Generale du Luxembourg (n/k/a BGL BNP Paribas S.A.)
21.	Adv. Pro. 11-01565	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. FS/ING Lux, et al.</i>	ING Luxembourg
22.	Adv. Pro. 11-01584	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. Societe Generale Bank & Trust (Luxembourg), et al.</i>	Société Générale Luxembourg f/k/a Société Générale Bank and Trust
23.	Adv. Pro. 11-01598	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. Banque et Caisse D'epargne de L'Etat Lux, et al.</i>	Banque et Caisse D'Epargne de L'Etat Luxembourg
24.	Adv. Pro. 11-01615	<i>Fairfield Sigma Ltd. v. Societe Europeenne de Banque S.A.</i>	Intesa Sanpaolo Bank Luxembourg SA (formerly known as Societe Europeenne de Banque S.A.)
25.	Adv. Pro. 12-01147	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. Banque Degroof Petercam Luxembourg, S.A., et al.</i>	Banque Degroof Petercam Luxembourg S.A.
26.	Adv. Pro. 12-01187	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. Banque Havilland S.A., et al., f/k/a/ Banco Popolare di Verona e Novara Luxembourg S.A.</i>	Banque Havilland S.A.
27.	Adv. Pro. 12-01555	<i>Fairfield Sentry Ltd. (In Liquidation), et al. v. HSH Nordbank Securities S.A., et al.</i>	HSH Nordbank Securities S.A. n/k/a HCOB Securities S.A.

APPENDIX B
ADDITIONAL COUNSEL

ALLEGAERT BERGER & VOGEL LLP

John F. Zulack
jzulack@abv.com
Lauren J. Pincus
lpincus@abv.com
111 Broadway, 20th Floor
New York, New York 10006
(212) 571-0550

Attorneys for Edmond de Rothschild (Europe) f/k/a Banque Privee Edmond de Rothschild (Europe); Société Générale Luxembourg f/k/a Société Générale Bank and Trust.

CLEARY GOTTlieb STEEN & HAMILTON LLP

Breon S. Peace
bpeace@cgsh.com
Ari D. MacKinnon
amackinnon@cgsh.com
Thomas S. Kessler
tkessler@cgsh.com
One Liberty Plaza
New York, NY 10006
(212) 225-2000

Attorneys for BNP Paribas Luxembourg (a/k/a BGL BNP Paribas S.A.); BGL BNP Paribas S.A. (f/k/a/ Fortis Banque Luxembourg); Banque Generale du Luxembourg (n/k/a BGL BNP Paribas S.A.) and BNP Securities Services Luxembourg S.A.

CLEARY GOTTlieb STEEN & HAMILTON LLP

Elizabeth Vicens
evicens@cgsh.com
Benjamin S. Beller
bbeller@cgsh.com
One Liberty Plaza
New York, NY 10006
(212) 225-2000

Counsel for Caceis Bank Luxembourg

CLIFFORD CHANCE US LLP

Jeff E. Butler
Jeff.Butler@CliffordChance.com
31 West 52nd Street
New York, NY 10019
Telephone: (212) 878-8000
Facsimile: (212) 878-8375

*Attorneys for Banque Internationale á Luxembourg SA; Banque et Caisse d 'Epargne de l'Etat
Luxembourg; and ING Luxembourg SA*

COOLEY LLP

Ian Shapiro
ishapiro@cooley.com
55 Hudson Yards
New York, NY 10001-2157
(212) 479-6000

Counsel for Banque de Luxembourg

DAVIS & GILBERT LLP

Joseph Cioffi
jcioffi@dglaw.com
Bruce M. Ginsberg
bginsberg@dglaw.com
H. Seiji Newman
hsnewman@dglaw.com
1740 Broadway
New York, New York 10019
Telephone: (212) 468-4800
Facsimile: (212) 468-4888

*Attorneys for Natixis Wealth Management Luxembourg, formerly known as Natixis Private
Banking International S.A.*

DAVIS POLK & WARDWELL LLP

Elliot Moskowitz
elliot.moskowitz@davispolk.com
Andrew Ditchfield

andrew.ditchfield@davispolk.com
450 Lexington Avenue
New York, NY 10017
P: 212-450-4000
F: 212-701-5800

Attorneys for Intesa Sanpaolo Bank Luxembourg SA (formerly known as Société Européenne de Banque S.A.)

DECHERT LLP

Gary J. Mennitt
gary.mennitt@dechert.om
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036
(212) 698-3831

Attorneys for Banque Degroof Petercam Luxembourg S.A.

KATTEN MUCHIN ROSENMAN LLP

Anthony L. Paccione
anthony.paccione@kattenlaw.com
Mark T. Ciani
mark.ciani@kattenlaw.com
575 Madison Avenue
New York, NY 10022
Telephone: 212-940-8800
Attorneys for RBC Investor Services Bank S.A. (named as RBC Dexia Investor Services Bank S.A.)

LINKLATERS LLP

James R. Warnot
james.warnot@linklaters.com
Brenda D. DiLuigi
brenda.diluigi@linklaters.com
1345 Avenue of the Americas
New York, NY 10105
(212) 903-9000

Attorneys for Banque Havilland S.A.

REED SMITH LLP

David M. Schlecker
dschlecker@reedsmith.com
599 Lexington Ave.
New York, NY 10022
(212) 205-6083

*Counsel for HSH Nordbank Securities S.A.
n/k/a HCOB Securities S.A.*

SHEARMAN & STERLING LLP

Brian H. Polovoy
bpolovoy@shearman.com
Randall Martin
Randall.Martin@Shearman.com
599 Lexington Avenue
New York, NY 10022-6069
Telephone: (212) 848-4000

Attorneys for Defendant Banco Itaú Europa Luxembourg SA